In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1139

ZIGMONT J. LETOWT, JR., and VIRGINIA C. LETOWT, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

In 1956 petitioner was transferred by his employer from Bethlehem, Pennsylvania, to Johnstown, Pennsylvania, approximately 245 miles away. For personal reasons, including the fact that some of their children attended college in the Bethlehem area, petitioner and his wife continued to live in Bethlehem. On his federal income tax returns for 1958

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[1] Virginia C. LeTowt is a party solely because she filed joint returns with her husband.

and 1959, petitioner claimed as deductions amounts spent in traveling to Johnstown and for lodging in Johnstown during the week. The Tax Court, affirmed by the court of appeals, disallowed the deductions.

Section 162(a)(2) of the Internal Revenue Code of 1954 allows a deduction for "all the ordinary and necessary expenses * * * [incurred] in carrying on any trade or business, including * * * traveling expenses * * * while away from home in the pursuit of a trade or business." To be deductible, traveling expenses must be incurred because of the needs of the business; those incurred, as in this case, solely because of the taxpayer's personal desires to live in a city other than that in which he is employed are nondeductible "personal" expenses. *Commissioner* v. *Flowers*, 326 U.S. 465. The decision is correct and there is no conflict of decisions.[2] The petition should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

GILBERT E. ANDREWS,
ROBERT H. SOLOMON,
Attorneys.

JUNE 1964.

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[2] Assessment and collection of a deficiency determined by the Tax Court are stayed only if the taxpayer files a bond pending review (§ 7485). Since petitioner did not file the required bond, the action taken to collect the tax, of which petitioner also complains, was fully authorized.

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